



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2022-0001; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BG36

### Endangered and Threatened Wildlife and Plants; Lower Colorado River Distinct Population Segment of Roundtail Chub (*Gila robusta*); Gila Chub (*Gila intermedia*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notification of petition finding; advance notice of proposed rulemaking.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a finding on a petition to list the Lower Colorado River basin distinct population segment (DPS) of the roundtail chub (*Gila robusta*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the Lower Colorado River roundtail chub DPS as an endangered or threatened species. However, in conducting the necessary research to inform this petition finding, we have determined that we should consider removing the Gila chub (*Gila intermedia*) from the protections of the Act. Therefore, this document includes an advance notice of proposed rulemaking pertaining to removing the Gila chub, currently listed as endangered, from the List of Endangered and Threatened Wildlife. We ask the public to submit to us any information relevant to the status of these species or their habitats.

**DATES:** *Petition finding:* The finding in this document pertaining to the Lower Colorado River basin DPS of the roundtail chub (*Gila robusta*) was made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comment submission on the advance notice of proposed rulemaking:* We will accept comments pertaining to Gila chub (*Gila intermedia*) that are received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** *Petition finding:* A detailed description of the basis for this finding is available on the internet at <https://www.regulations.gov> under Docket No. FWS-R2-ES-2022-0001.

Supporting information used to prepare this finding is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Comment submission on the advance notice of proposed rulemaking:* You may submit comments pertaining to Gila chub (*Gila intermedia*) by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2022-0001, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R2-ES-2022-0001, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

*Information regarding the Lower Colorado River roundtail chub DPS:*

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Lower Colorado River roundtail chub DPS, whenever it becomes available, to the person listed below under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mark Lamb, Arizona Ecological Services Field Office, 9828 North 31st Ave. C3, Phoenix, AZ 85051–2517; telephone 602–242–

0210. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving a petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (“12-month finding”). We must make a finding that the petitioned action is: (1) not warranted; (2) warranted; or (3) warranted but precluded by pending proposals regarding other species. We must publish a notice of these 12-month findings in the *Federal Register*.

### **Summary of Information Pertaining to the Five Factors**

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act states that the term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines an “endangered species” as any species that is in danger of extinction throughout all or a significant portion of its range and a “threatened species” as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or

range;

- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.”

In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered

species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Service can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Lower Colorado River roundtail chub distinct population segment (DPS) meets the definition of an endangered species or a threatened species, we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. Petition evaluations may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public. Therefore, we reviewed the petition, information available in our files, and other available published and unpublished information.

The species assessment form for the species contains more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that the species does not meet the Act's definition of an endangered species or a threatened species. Additionally, a thorough review of the taxonomy, life history, ecology, and stressors to the Lower Colorado River roundtail chub DPS is presented in the species status assessment report (Service 2022, entire). This supporting information can be found on the internet at <https://www.regulations.gov> under Docket No. FWS-R2-ES-2022-0001. The following is an informational summary for the finding in this document.

### **Previous Federal Actions**

On August 9, 2002, we published a proposed rule to list the Gila chub (*Gila intermedia*), which historically was found throughout the Gila River basin in southern Arizona, southwestern New Mexico, and northeastern Sonora, Mexico, as endangered with critical habitat (67 FR 51948). On April 14, 2003, we received a petition from the Center for Biological Diversity (CBD) requesting that we list both the headwater chub (*Gila nigra*) and a DPS of the roundtail chub (*Gila robusta*) in the Lower Colorado River basin as an endangered or threatened species under the Act. The petition also requested designating critical habitat concurrently with the listing for both species. Following receipt of the 2003 petition, and pursuant to a stipulated settlement agreement, we published a 90-day finding on July 12, 2005 (70 FR 39981), stating that the petitioners had provided sufficient information to indicate that listing of both species may be warranted.

On November 2, 2005, we published a final rule listing the Gila chub (*Gila intermedia*) as endangered with critical habitat (70 FR 66664).

On May 3, 2006, we published a 12-month finding (71 FR 26007) that listing was not warranted for the Lower Colorado River roundtail chub DPS, and that listing for the headwater chub was warranted but precluded by higher priority listing actions. On September 7, 2006, we received a complaint from CBD for declaratory and injunctive relief, challenging our decision

not to list the Lower Colorado River basin DPS of the roundtail chub as an endangered species under the Act. On November 5, 2007, in a stipulated settlement agreement, we agreed to commence a new status review of the petitioned Lower Colorado River basin DPS of the roundtail chub and to submit a 12-month finding to the *Federal Register* by June 30, 2009.

On July 7, 2009, we published a 12-month finding (74 FR 32352) on the Lower Colorado River roundtail chub DPS. The finding determined that the entity qualified as a DPS by satisfying the discreteness and significance elements of the Interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Act (DPS Policy; 61 FR 4722, February 7, 1996). However, we further concluded that listing of the Lower Colorado River roundtail chub DPS was warranted but precluded due to higher priority listing actions at the time. The DPS remained on the candidate list from 2009 to 2014 (74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69993, November 21, 2012; 78 FR 70103, November 22, 2013; 79 FR 72449, December 5, 2014).

On October 7, 2015, following completion of a species status assessment, we published a proposed rule to list the headwater chub and the Lower Colorado River roundtail chub DPS as threatened species under the Act (80 FR 60754). On April 7, 2017, we withdrew the 2015 proposed rule following a taxonomic revision that concluded the available evidence did not support species-level status for the headwater chub (*G. nigra*) and the Gila chub (*G. intermedia*), collapsing them into roundtail chub (*G. robusta*) (Page et al. 2017, p. 459) (82 FR 16981). However, despite this taxonomic revision, Gila chub was unaffected by the 2017 withdrawal and remains listed as endangered on the List of Endangered and Threatened Wildlife.

In 2018, CBD challenged our withdrawal of the proposed rule on the headwater chub and Lower Colorado River roundtail chub DPS. On March 31, 2021, the U.S. District Court found the withdrawal of the 2015 proposed rule was arbitrary and capricious because we withdrew the rule based on taxonomic revisions, but never fully reevaluated the petitioned entity, the DPS. In other words, the taxonomic revisions created a new biological entity in the Lower Colorado

River basin that, under the Act, we were still obligated to assess under the original 2003 petition. The court vacated the withdrawal of the proposed rule and ordered that a new 12-month finding be completed by March 31, 2022. Importantly, the court order concerns only the Lower Colorado River basin DPS, since that was the portion of the roundtail chub range for which the Service was originally petitioned. This finding addresses that court order.

### *Summary of Finding*

The original petition to list roundtail chub in the Lower Colorado River basin included populations found in the Bill Williams, Gila, and Little Colorado River basins, which are located in Arizona and New Mexico. Traditionally, the Colorado River basin has been divided into two sections, the Upper and Lower basins, that are demarcated by Lee's Ferry, which is located in northern Arizona downstream of Glen Canyon Dam. This demarcation combines the Bill Williams, Gila, and Little Colorado River basins into the traditional geographical definition of the Lower Colorado River basin.

In regard to roundtail chub populations in these basins, genetic research has revealed that roundtail chub in the Lower and Upper Colorado River basins are genetically distinct. This research has also found that roundtail chub from the Little Colorado River, traditionally geographically placed in the Lower Colorado River basin, belong to the same genetic lineage as roundtail chub in the Upper Colorado River basin. Therefore, as part of this finding, we separated roundtail chub occupying the Little Colorado River from those occupying the remainder of the Lower Colorado River basin (i.e., Bill Williams and Gila River basins) and considered them a separate biological entity.

After reviewing the DPS Policy, we determined that the Lower Colorado River basin (i.e., Bill Williams and Gila River basins) portion of the roundtail chub's range was both discrete and significant. This entity will hereafter be referred to as the "Lower Colorado River roundtail chub DPS." Roundtail chub in the Little Colorado River do meet the threshold of discrete under the policy, but not the standard for significant. Therefore, this 12-month finding specifically



addresses the status of roundtail chub only in the Lower Colorado River DPS. A more thorough examination of the DPS determination can be found in the species assessment form that accompanies this 12-month finding.

Within the Lower Colorado River DPS, roundtail chub exhibit a complex population structure determined by hydrological regimes and connections. Roundtail chub occupy a variety of aquatic habitats within this range, and the amount and complexity of available habitat influences population abundance and resiliency. Across the roundtail chub's range, there is variation in ecological settings and genetic diversity that represent potential adaptive capacity for the species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Lower Colorado River roundtail chub DPS, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. We identified several influences that could affect the viability of the species. These influences include nonnative species and alterations to the hydrological regime, which have reduced the distribution and abundance of roundtail chub in the past and continue to impact populations today. These influences may be exacerbated by climate change into the future, which will affect precipitation patterns, drought, and water usage. Several Federal and State agencies and Tribal nations have been implementing conservation measures through best management practices, specific to the roundtail chub, to help sustain the species and its habitat where possible. These efforts have stabilized most existing populations and expanded the species' distribution through translocations. Since 2004, to increase population sizes and aid in population establishment and persistence, 20 populations of roundtail chub have been introduced, reintroduced, or expanded within the Lower Colorado River basin and at least 37 augmentations in 14 streams have occurred at locations occupied by roundtail chub.

Currently, we estimate that the Lower Colorado River basin roundtail chub DPS occupies

around 34 percent of its historical range in the basin and has been extirpated from two of the nine major basins it historically occupied. Within its current range, 83 populations occupy a cumulative total of 1,146 miles (1,845 kilometers) of stream length. Most of these populations are stable or increasing, despite the co-occurrence of nonnative species across much of the range.

The factors most likely to influence the future status of roundtail chub in the Lower Colorado River basin are nonnative species, modification to the hydrological regime, and conservation management. Climate change is also expected to affect the Lower Colorado River basin roundtail chub DPS, mainly by altering the hydrological regime, which will influence the amount of habitat and periodicity of beneficial floods. In the species status assessment report, we modeled these effects to project trends in roundtail chub occupancy into the future (Service 2022, pp. 37–51).

While there may be some reduction in occupancy, we concluded that most sites that are currently occupied will likely continue to be so in the 50-year foreseeable future. Even under scenarios that incorporated climate change effects, most populations were predicted to remain extant, and these extant populations will be widely distributed across the species' range. All scenarios we examined contain a positive effect of management actions on Lower Colorado River roundtail chub DPS population resiliency, and we anticipate these efforts will continue to benefit the species into the future. Overall, these results suggest that populations of this DPS will continue to be adequately resilient and retain sufficient intraspecific diversity to cope with changing environments in the future.

These findings were true for the Lower Colorado River roundtail chub DPS throughout its range as well as in our analysis of any potentially significant portions of its range. In evaluating any potentially significant portions of the species' range, we considered whether the threats are geographically concentrated in any portion of the DPS's range at a biologically meaningful scale. Based on the best available information, we found no concentration of threats in any portion of the DPS's range at a biologically meaningful scale. Therefore, no portion of the

Lower Colorado River roundtail chub DPS's range provided a basis for determining that the species is in danger of extinction now or likely to become in danger of extinction within the foreseeable future in a significant portion of its range.

Accordingly, our review of the best available scientific and commercial information regarding the past, present, and future threats to the species indicates that the Lower Colorado River roundtail chub DPS is not in danger of extinction now nor likely to become endangered within the foreseeable future throughout all or a significant portion of its range and does not meet the definition of an endangered species or a threatened species in accordance with section 3(6) and section 3(20) of the Act. Therefore, we find that listing the Lower Colorado River roundtail chub DPS as an endangered or threatened species under the Act is not warranted at this time. A detailed discussion of the basis for this finding, including a summary of the changes in information that informed this finding relative to the 2015 proposed rule, can be found in the species assessment form, the revised species status assessment report (Service 2022, entire), and other supporting documents (see **ADDRESSES**, above).

#### *New Information*

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Lower Colorado River roundtail chub DPS to the person listed above under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor this species and make appropriate decisions about its conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

#### **Advance Notice of Proposed Rulemaking**

As mentioned previously, the Gila chub (*Gila intermedia*) remains listed as endangered and was unaffected by the 2017 withdrawal of the 2015 proposed rule to list the headwater chub and the Lower Colorado River roundtail chub DPS as threatened species under the Act (82 FR 16981, April 7, 2017), despite the taxonomic revision concluding species-level status is not

warranted for the Gila chub. Therefore, we hereby announce that we are considering issuing a proposed rule to remove Gila chub (*Gila intermedia*) from the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). This document seeks relevant comments from the public on the status of the species, its taxonomy, or its habitats that could serve to inform a new rulemaking action. While we are requesting information on our consideration of issuing a proposed rule to remove Gila chub from the List of Endangered and Threatened Wildlife here, if we determine issuing such a proposed rule is supported by the best information available, formal rulemaking will follow with the opportunity for additional review and comment.

As section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made “solely on the basis of the best scientific and commercial data available,” please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit your comments and materials concerning this advance notice of proposed rulemaking for the Gila chub by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

## References Cited

A list of the references cited in this document is available on the internet at <https://www.regulations.gov> under Docket No. FWS-R2-ES-2022-0001 in the species assessment form, or upon request from the person listed above under **FOR FURTHER**

## **INFORMATION CONTACT.**

### **Authors**

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team, Ecological Services Program.

### **Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Martha Williams,**  
*Director,*

*U.S. Fish and Wildlife Service.*

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